

Senator Gregory S. Bell proposes the following substitute bill:

COMPARATIVE FAULT AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott L Wyatt

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill expands the definition of "fault" to include intentional torts and allows for joint and several liability.

Highlighted Provisions:

This bill:

- ▶ expands the definition of fault to include intentional torts;
- ▶ provides that the fact finder may find an intentional tortfeasor jointly and severally liable with other intentional tortfeasors;
- ▶ allows an intentional tortfeasor to seek contribution from other intentional tortfeasors; and
- ▶ limits the injured person's recovery to one recovery of the total amount of damages from multiple defendants.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 78-27-37, as last amended by Chapter 102, Laws of Utah 2005
- 27 78-27-38, as last amended by Chapter 79, Laws of Utah 2005
- 28 78-27-39, as last amended by Chapter 79, Laws of Utah 2005
- 29 78-27-40, as last amended by Chapter 221, Laws of Utah 1994



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **78-27-37** is amended to read:

33 **78-27-37. Definitions.**

34 As used in Section 78-27-37 through Section 78-27-43:

35 (1) "Defendant" means a person, other than a person immune from suit as defined in
36 Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

37 (2) "Fault" means any actionable breach of legal duty, act, or omission proximately
38 causing or contributing to injury or damages sustained by a person seeking recovery, including
39 negligence in all its degrees, comparative negligence, assumption of risk, strict liability,
40 intentional torts breach of express or implied warranty of a product, products liability, and
41 misuse, modification, or abuse of a product.

42 (3) "Person immune from suit" means:

43 (a) an employer immune from suit under Title 34A, Chapter 2, Workers' Compensation
44 Act, or Chapter 3, Utah Occupational Disease Act; and

45 (b) a governmental entity or governmental employee immune from suit pursuant to
46 Title 63, Chapter 30d, Governmental Immunity Act of Utah.

47 (4) "Person seeking recovery" means any person seeking damages or reimbursement on
48 its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

49 Section 2. Section **78-27-38** is amended to read:

50 **78-27-38. Comparative fault.**

51 (1) The fault of a person seeking recovery may not alone bar recovery by that person.

52 (2) A person seeking recovery may recover from any defendant or group of defendants
53 whose fault, combined with the fault of persons immune from suit and nonparties to whom
54 fault is allocated, exceeds the fault of the person seeking recovery prior to any reallocation of
55 fault made under Subsection 78-27-39(2).

56 (3) No defendant is liable to any person seeking recovery for any amount in excess of

57 the proportion of fault attributed to that defendant under Section 78-27-39, except as provided
 58 in Subsection (5).

59 (4) (a) The fact finder may, and when requested by a party shall, allocate the
 60 percentage or proportion of fault attributable to each person seeking recovery, to each
 61 defendant, to any person immune from suit, and to any other person identified under
 62 Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate fault. In the case
 63 of a motor vehicle accident involving an unidentified motor vehicle, the existence of the
 64 vehicle shall be proven by clear and convincing evidence which may consist solely of one
 65 person's testimony.

66 (b) Any fault allocated to a person immune from suit is considered only to accurately
 67 determine the fault of the person seeking recovery and a defendant and may not subject the
 68 person immune from suit to any liability, based on the allocation of fault, in this or any other
 69 action.

70 (5) An intentional tortfeasor defendant may be jointly and severally liable for that
 71 portion of fault attributed to the conduct of another intentional tortfeasor defendant if the fact
 72 finder determines:

73 (a) the defendant sought to be held jointly and severally liable ~~§~~ → **[acted intentionally;**

74 ~~—— (b) the conduct of the defendant sought to be held jointly and severally liable was]~~ **either**

74a **intentionally engaged in the conduct, or** ← ~~§~~

75 intended to cause the resulting damage or injury; and

76 ~~§~~ → ~~[(c)]~~ **(b)** ← ~~§~~ the conduct of the defendant sought to be held jointly and severally liable

76a was a

77 substantial factor in causing the resulting damage or injury.

78 (6) Any joint and several liability under Subsection (5) shall be limited to

79 compensatory damages.

80 (7) An intentional tortfeasor defendant held jointly and severally liable for all or part of

81 the fault of another intentional tortfeasor defendant under this section may obtain contribution

82 from another intentional tortfeasor defendant to the extent of sums paid to the person seeking

83 recovery based on the joint and several liability derived from that intentional tortfeasor

84 defendant. Contribution, except as provided under this Subsection (7), is not otherwise

85 available. This provision does not foreclose an action for contribution from an unknown but

86 later identified intentional tortfeasor defendant to whom fault was apportioned by the fact

87 finder.

88 (8) A person seeking recovery from multiple defendants is entitled to only one recovery
89 of the total amount of damages awarded by the fact finder.

90 Section 3. Section **78-27-39** is amended to read:

91 **78-27-39. Separate special verdicts on total damages and proportion of fault.**

92 (1) The trial court may, and when requested by any party shall, direct the jury, if any, to
93 find separate special verdicts determining the total amount of damages sustained and the
94 percentage or proportion of fault attributable to each person seeking recovery, to each
95 defendant, to any person immune from suit, and to any other person identified under
96 Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate fault. The total
97 amount of fault under this Subsection (1) shall equal 100%.

98 (2) (a) If the combined percentage or proportion of fault attributed to all persons
99 immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of
100 fault to zero and reallocate that percentage or proportion of fault to the other parties and those
101 identified under Subsection 78-27-41(4) for whom there is a factual and legal basis to allocate
102 fault in proportion to the percentage or proportion of fault initially attributed to each by the fact
103 finder. After this reallocation, cumulative fault shall equal 100% with the persons immune
104 from suit being allocated no fault.

105 (b) If the combined percentage or proportion of fault attributed to all persons immune
106 from suit is 40% or more, that percentage or proportion of fault attributed to persons immune
107 from suit may not be reduced under Subsection (2)(a).

108 (c) (i) The jury may not be advised of the effect of any reallocation under Subsection
109 (2).

110 (ii) The jury may be advised that fault attributed to persons immune from suit may
111 reduce the award of the person seeking recovery.

112 (3) After apportionment of fault under Subsections (1) and (2), the trial court may, and
113 when requested by any party shall, instruct the jury as to the factors that may be used in
114 evaluating and apportioning fault between the persons determined to be at fault. Factors may
115 include:

116 (a) whether the actions of a person claimed to be liable because of fault were acts of
117 commission or omission, including the failure to protect another from the specific risk of an
118 intentional tort;

119 (b) the differing levels of culpability among those who act intentionally or in concert
120 with one another;

121 (c) the degree of any relationship or link between the act or omission to act of a person
122 claimed to be liable because of fault and the intentional wrongdoing of another; or

123 (d) any other factor which reasonably supports an apportionment of fault.

124 ~~[(3)]~~ (4) A person immune from suit may not be held liable, based on the allocation of
125 fault, in this or any other action.

126 Section 4. Section **78-27-40** is amended to read:

127 **78-27-40. Liability limited to proportion of direct or shared fault -- Contribution.**

128 (1) Subject to Section 78-27-38, the maximum amount for which a defendant may be
129 liable to any person seeking recovery is that percentage or proportion of the damages
130 equivalent to the percentage or proportion of fault attributed to that defendant.

131 (2) A defendant is not entitled to contribution from any other person, except as
132 provided by Section 78-27-38.

133 (3) A defendant or person seeking recovery may not bring a civil action against any
134 person immune from suit to recover damages resulting from the allocation of fault under
135 Section 78-27-38.

H.B. 45 1st Sub. (Buff) - Comparative Fault Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill may result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
